IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3799 OF 2006

Miss Kalpana Shamji Shah ...Petitioner

V/s.

The Municipal Corporation of Greater Mumbai & Ors. ...Respondents

Shri.J.J. Shah for the Petitioner.
Shri. A.J. Bhor for B.M.C.
Shri.Chandra Naik for Respondent No.2 & 3.

CORAM : V.M. KANADE, J.
DATED : 7th MARCH, 2007.

P.C. :-

1. Heard learned counsel for the Petitioner and learned counsel for the Respondents.

2. The Petitioner is challenging the order passed by City Civil Court rejecting his application for amendment of plaint to bring the subsequent events on record.

3. The learned counsel appearing on behalf of Respondents filed affidavit and submitted and suit does not survive since the alleged un-authorised construction had already been demolished. He has filed

affidavit to that effect alongwith photographs showing that the shed has been demolished. This fact is disputed by the Petitioner herein. There is no objection raised by the Respondents in their reply in the chamber summons to the plaint.

4. Since the Petitioner seeks to amend the plaint in order to bring subsequent evidence on record, I do not see any reason as to why such amendment should not be allowed. Hence, impugned order is set aside. Chamber summons is allowed. The Petitioner is permitted to amend the plaint as per scheduled enclosure to the affidavit in support.

5. It is clarified that defendant No.2 and 3 has an opportunity to file appropriate application in the Trial Court to bring facts of demolition of un-authorised structure on record and make prayer for dismissal of suit on the ground that suit has become infructuous. Writ petition is allowed in above terms. All contentions of the parties are kept open.

. Writ petition is, accordingly disposed of.

V.M. KANADE, J.